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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by France Libertes: Fondation Danielle Mitterand (Special)

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[14 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Please recycle

Violation of the right to social claims: the example of Morocco in the non-self-governing territory of Western Sahara*

The Saharawi people living in the Territories of Western Sahara have long been mobilized to defend its social, economic and political rights not respected by the Moroccan administration.

On numerous occasions the actors of these claims have been qualified by the Moroccan authorities "delinquent", inter alia...

The most significant example was definitely the treatment of the dismantling of Gdeim Izik protest camp in October-November 2010

The devastating social and economic conditions in which live the overwhelming majority of Sahrawis in the city of El Aaiun, and their situation characterized by the absence of freedom of expression , speech and assembly, led the Sahrawis to move out the city , hoping that their voices would thus been heard by the administrations governing the territory. Several attempts to move out of the city had previously failed until a group of unemployed youth, many married and heads of families, decided on October 10, 2010 to conduct this social movement which started with 50 to 70 tents to rapidly increase.

Though the exact number of tents and residents of Gdeim Izik, east of El Aaiun, is not available, the estimates counted nearly 20,000 people spread over more than 6.500 tents. Whilst initially the assembling of the camp tents was slightly disordered due to the increasing number of people, volunteers restructured it. According information locally gathered and testimonies received a group of volunteers restructured the camp, dividing it into seven sections, each bearing a number. Each youth managed a specific number of tents mounted following a schematic taking into account the ease of access and exit from the tents as well as acceptable distances to avoid risk of fire.

Volunteers worked providing camp residents all possible services, facilitating contacts with the leaders coordinating the action, helping the sick or attending cases requiring medical intervention. All worked in coordination with other stakeholders to maintain internal security, provide essential services and ensure the cleanliness of the section environment as well as that of the whole camp.

The authorities sent a commission of the Ministry of Interior with three governors from central government to analyze the social demands of the people. The Committee held meetings with the camp dialogue committee but the latter never materialized, at least from the perspective of dialogue committee, except in the presence of Minister of the Interior.

Some information report that authorities have always focused on the dismantling of the camp as a prerequisite to any consideration of the demands of the population , while the dialogue committee, on behalf of the camp residents, insisted on the need to begin implementing solutions or at least to obtain guarantees before starting dismantling the camp

Both parties to the dialogue held at least two meetings with the Minister in question, the last one took place on November 4, where an agreement in principle was reached that the Moroccan government committed itself to gradually and step by step meet the claims for housing and work, provided that the implementation of concrete measures of the agreement would begin on Monday, November 8, 2010. The authorities did not provide a copy of the minutes of the agreement to the dialogue committee and the agreement was concluded with a dinner on the beach Foum Eloued.

Nevertheless, after the violent dismantling of the camp on November 8, 2010 by the Moroccan police, the group accused of organizing the camp was arrested and charged with crimes of common law and 24 people were brought before a military court. Overnight, those who were the interlocutors of the Moroccan

authorities became common criminals charged with kidnapping thousands of people and responsible for deaths caused during the attack on the camp.

According to the indictment, which closed the preliminary investigation procedure dated 3 November 2011, the charges against them were:

- to have formed a criminal gang to commit violence against members of the police force during their service, including murder,
- to have participated in violence against members of the police force in the exercise of their functions, including murder,
- of desecrating a corpse.

It should be noted that the first detainee, a human rights defender, Naama Asfari, was arrested on the evening of November 7 at El Aaiun and could not therefore have taken part in the violence of November 8.

The trial began on 1 February 2013, when 21 prisoners had already spent more than two years in custody by court order. The decision to prosecute civilians before military courts violates the fundamental international principles of fair trial.

The accused may appeal the verdicts of the military court only before the Court of Cassation, which decides on issues of procedure, of jurisdiction, abuse of power and law enforcement, but not on substantive issues. On the contrary the Court of Appeal in the civil justice system may review the facts of a case.

Apparently the court accepted the confessions of the accused as evidence without investigating the claims of the defendants that these confessions were the result of torture. They said they were innocent of all charges against them. The authorities should give the accused the right to be retried by a civilian court and placed on bail until valid reasons to justify their detention have been established.

The military court sentenced nine defendants to life imprisonment, 14 to prison terms ranging from 20 to 30 years and two others to 2 years which they already served. All faced a possible death sentence. The authorities charged them all of "association of criminals", most of them of premeditated violence against the police resulting in death, and others of complicity in these crimes. Two defendants met with the additional charge of «defilement or mutilation" of a corpse. The defendants appealed the verdicts.

The written court judgment does not detail the incriminating evidence on which it relied to condemn all the defendants. Since it does not mention any further incriminating evidence, the verdict seems to be based solely on the denied confessions of the defendants to the police. Yet the court rejected the requests made by the defense to investigate the allegations of the defendants, according to whom the police have tortured and forced them to sign the minutes they had not read. Instead, the court accepted the argument of prosecutor, that the defendants had failed to request a medical examination at their first appearance before the judge, and that it had been too long since.

Although the defendants did not request a medical examination when they appeared before the judge, most have clearly declared to have been tortured while in custody. Many of them also claimed that the police had forced them to sign the minutes they had not read, or to put their fingerprints on these documents. The minutes of these hearings reflect these allegations, but nothing in the record shows that a doctor has examined the defendants, or that the court has investigated the matter, in order to assess the credibility of these claims.

During the trial, no prosecution witness could identify one single defendant as being responsible for violent acts. The prosecution presented weapons which were seized by police in Gdeim Izik, but did not provide any scientific or forensic evidence implicating the defendants. The only link between the defendants and the weapons were their disputed confession.

Apart from these disputed confessions of the defendants, the Public Prosecutor has provided very little evidence, if any, that might charge anyone of the defendants with the death of members of the security forces. The written judgment did not mention how the incriminating evidence, videos and photographs presented in court, could involve the defendants individually. These documents show scenes of violence, but do not seem to identify the defendants as the perpetrators.

In view of the foregoing, we are very concerned by the fact that association leaders and human rights defenders could have been condemned for defending social demands

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*The Bureau International pour le Respect des Droits de l'Homme au Sahara Occidental, an NGO without consultative status, also shares the views expressed in this statement.

The right of indigenous peoples to consultation about major development projects

Indigenous peoples are especially affected and vulnerable to major development projects

An estimated 370 million indigenous peoples live in 77 countries and inhabit 20% of the world's land surface[1]. These vast territories, which are among the few still protected areas, are essential to preserving biodiversity. However these territories also contain significant mineral and hydraulic[2] resources and thus are particularly coveted by industrial companies[3] undertaking major development projects, leading all too often to serious violations to the rights of local populations' as well as irreversible environmental degradation.

States justify these major development projects with the need to "develop" their country and with the priority of "national interest" over individual interests. Hence, in Peru, a decree states that "the mining industry and the promotion of investment in this sector are in the national interest[4]", curtailing any opposition to major development projects in this area.

However, these major development projects have impacts that contribute to climate change[5] and alter the way of life of indigenous peoples: forced displacement, desertion of sacred sites, water contamination, and destruction of living and working environments, etc. violating indigenous people's right to self-determination[6] as well as indigenous peoples' right to determine their own priorities within the development process[7]. While we will have to rethink the Western development approach, it appears essential to build upon the virtuous model of development espoused by indigenous peoples[8]. As pointed out by the High Commissioner for Human Rights, Navanethem Pillay, "strategies based on the narrow pursuit of economic growth without due regard for equity and related environmental, social, and human rights considerations will both fail in their economic objectives, and risk damaging the planet, and the fundamental rights of the people who live here[9]".

In this context, implementing indigenous peoples' rights to consultation on any measures which may affect them directly, as recognized by International Labor Organization Convention n°169 (ILO169) and their right to free, prior and informed consent (FPIC), as recognized and stipulated by United Nations Declaration on the Rights of Indigenous Peoples[10], is a mean of preserving their human rights.

Consultation is not automatically participation, nor consent

In practice, the right to consultation is often limited to a mere process by which research is conducted and project impacts are clarified in order to obtain the consent from communities concerned by major development projects. This process leaves the door open to all sorts of pressure and manipulation.

In the majority of cases, the final opinion of the population does not determine the decision to pursue a project. This is the case, for example, in Ecuador, where a decree reduces prior consultation to a simple formality in which indigenous

[1] UNDPI, State of the World's Indigenous Peoples, Chapter 3, January 2010, DPI/2551/L
[2] The Declaration of the International Conference on Extractive Industries and Indigenous Peoples, march 2009
[3] Permanent Forum on Indigenous Issues, Consolidated report on extractive industries and their impact on indigenous peoples, May 2013, E/C.19/2013/16
[4] Presidency of the Republic of Peru, Supreme Decree N° 014-92-EM, June 1992
[5] GIEC, Changements climatiques 2013 : les éléments scientifiques, octobre 2013
[6] United Nations Declaration on the Rights of Indigenous Peoples, October 2007, article 3, A/61/L.67 and Add.1
[7] ILO, C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169), article 7
[8] The Guardian, Buen vivir: the social philosophy inspiring movements in South America, February 2013
[9] Navanethem Pillay, Open Letter to Member States Regarding Rio+20, march 2012
[10] United Nations Declaration on the Rights of Indigenous Peoples, October 2007

people have no opportunity to object to the project. The decree specifies if the participants are opposed to the project "it will not be realized, unless the competent authority insists on its implementation[11]". One could translate this as simply confirming projects already approved by the State and for which any contrary opinion will not be taken into account.

Sometimes a consultation takes place when license has already been awarded or construction started. This was the case in Bolivia, concerning the Isiboro Secure Indigenous Territory and National Park (TIPNIS) road project, where a series of legal and administrative provisions authorizing the road were approved prior to any consultation of local indigenous communities[12].

In other cases, governments and multinational companies intimidate people in order to influence their position. This case is evident in where the Brazilian government plans to build the São Luís do Tapajós hydroelectric dam and a military operation has been established on indigenous Munduruku territory[13].

These examples illustrate the limitations of the right to consultation, which is, in its application, not synonymous for participation in decision making nor the application of the right to free, prior and informed consent.

We assert that the true purpose of consultation is not to reach an agreement or consent, but rather the possibility for indigenous people to decide their own development priorities, with influence over decisions made by the State. The right to effective participation in decision-making processes should also result in an indigenous right to veto on any project that could impact them, whether they be legislative measures or infrastructure projects.

Shortcomings in terms of consultation concerning Brazilian large dam projects

Brazil is one of only twenty-two states to have ratified ILO Convention n°169. We would like to draw the Council's attention to the severity and recurrence of violations of the indigenous right to consultation concerning the approval and construction of large dams in Brazil.

In Brazil, 77% of electricity produced is hydroelectric[14]. Although Brazil ratified ILO Convention n°169 in 2002, according to the office of Brazil's Federal Public Ministry (MPF) no hydroelectric dam built by the Brazilian government in the Amazon has observed the Convention[15]. Since Amazonian rivers (Madeira, Tocantins, Araguaia, Xingu and Tapajós) account for 63% of Brazil's "hydroelectric potential", the risk of violations of rights of indigenous peoples is particularly acute in this region.

One of the most emblematic cases of rights violation is that of the approval and construction of the Belo Monte dam, undertaken by multinational companies including GDF-Suez and Alstom. Irregularities in the approval process of the hydroelectric project adjacent to indigenous lands have been repeatedly denounced. The Inter-American Commission on Human Rights (IACHR) undertook legal proceedings and called on Brazil to suspend the dam until indigenous consultation had been carried out. In reaction to this, the Brazilian government cut its relations with the institution, until it no longer requested suspension of the project[16].

[11] Presidency of the Republic of Ecuador, Decree n° 1040, article 22, April 2008

[12] Amnesty International, Open letter to the authorities of the Plurinational State of Bolivia in the context of the dispute concerning the Isiboro Secure Indigenous Territory and National Park, May 2012

[13] Federal Public Prosecutors' Office, April 2013, http://www.prpa.mpf.mp.br/news/2013/justica-suspende-operacao-tapajos

[14] International Rivers, O setor elétrico brasileiro e a sustentabilidade no século 21, November 2012

[15] Federal Public Prosecutors' Office, January 2014, http://www.prpa.mpf.mp.br/news/2014/mpf-recomenda-sem-consulta-previa-e-avaliacao-ambiental-usina-jatoba-deve-parar

[16] Florence Higuet, Brésil: le barrage de Belo Monte, RAMPEDRE, November 2012

Plans to build hydroelectric dams on the Tapajós River are similarly flawed. Hence, in 2013, MPF Federal Prosecutors, in response to the mobilization of local indigenous communities, requested that the licensing process for three dams on the Tapajós be halted until the consultation of indigenous peoples had taken place[17].

Thus we express our deep concern about violations of the right to consultation of indigenous peoples threatened by major development projects in Brazil. Additionally, we call on States to assume their responsibilities and the obligation to protect people's fundamental rights on their territory against companies, as promoted by the UN Guiding Principles on Business and Human Rights[18].

Recommendations

We urge States to:

- implement true consultation mechanisms, in the context of large dams and extractives projects, to seek to establish more equitable relations between transnational corporations and indigenous peoples, enabling these communities, where appropriate, to prevent the implementation of these projects.
- sign, ratify and observe ILO Convention n°169;
- observe their international commitments, including the United Nations Declaration on the Rights of Indigenous Peoples, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights;
- apply the United Nations Guiding Principles on Business and Human Rights;

We seek to draw attention of the following special rapporteurs on violations of the right to consultation of indigenous peoples:

- Special Rapporteur on the rights of indigenous peoples
- Special Rapporteur on the Human Rights of Internally Displaced Persons
- Special Rapporteur on the human right to safe drinking water and sanitation

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Amazon Watch, Amnesty International France, Association of International Lawyers NGO(s) without consultative status, also share the views expressed in this statement.

[17] Federal Public Prosecutors' Office, June 2013, http://ef.amazonia.org.br/2013/06/indios-afetados-por-hidreletricas-tres-processos-judiciais-nenhuma-consulta/

[18] United Nations Guiding Principles on Business and Human Rights, March 2011, A/HRC/17/31

The right to water in Peru and the criminalization of protest: human rights are not respected when facing the mining industry

Resulting from the last five sessions[1] of the Human Rights Council, resolution A/RES/64/292, adopted by the General Assembly of the United Nations, recognizes the right to water and sanitation for all as a fundamental right, as does resolution A/HRC/RES/15/9 adopted by the Human Rights Council. However, despite the concerns expressed by the Committee on Economic, Social and Cultural Rights (§ 63-A/HRC/WG.6/14/PER/2) about the effects of the extractive industry on health and quality of water, the right to water is far from being a reality for everyone in Peru.

The mining industry with open pit mines threatens and contaminates aquifers with toxic chemicals and heavy metals, degrading the areas where water is sourced and damaging the environment.

The Yanacocha mining company, which owns the largest gold mine in America, located in Cajamarca (Peru), aims to develop the Conga project to extract gold and copper from the head of the water basin, an area considered to be a complex ecosystem of water renewal. This area consists of approximately forty lagoons, hundreds of acres of wetlands and grasslands that are the main source of water for the south of the region.

The Conga project plans in its initial stage to destroy four mountain lakes: two lakes will be used for the extraction of gold and copper, and two will be converted into dumps for their operational waste. The report by Robert E. Moran about the Environmental Impact Assessment of Conga shows that an average of 85,000 tons of toxic tailings is to be deposited in the mountains and river sources every day throughout the seventeen years of extraction. Hundreds of acres of wetlands would be destroyed and millions of cubic meters of water would be contaminated. Villagers living in these areas dedicate themselves mainly to agriculture and cattle rearing.

Despite this, Ollanta Humala in his television speech on 24th May, 2013 declared his support for the mining project and has issued a series of measures with the Supreme Decree No. 054-2013-PCM stating that investment in the mining sector must be accelerated and facilitated, declaring it of national interest at the expense of the protection of cultural and environmental heritage.

In September 2011, the government adopted the Law of Prior Consultation. On 3rd March, 2012 the Supreme Decree 001-2012-MC was established which restricts prior consultation to after the date of publication of the regulation, it also states that the projects that are considered of national interest should be carried out. Thus, the Conga mining project is exempt from the Consultation law. Despite the protests, the government is imposing its will.

The population of Cajamarca began protesting against the Conga project in November 2011; strikes, regional blockages, marches, rallies, and occupations of the Conga area followed. The government's response was to call a state of emergency several times and to violently repress the protests - causing serious injuries to many, such as the case of Elmer Campos who is now paralyzed for life.

Cajamarca was militarized by sending hundreds of troops for eight months straight. Five people[2] were killed by security forces during peaceful demonstrations. On 4th July, 2013, Marco Arana, renowned environmentalist, was brutally assaulted by police, also assaulted were the two lawyers who went to see him at the police station. He was released thanks to the national and international outcry.

[1] See the declarations A/HRC/24/NGO/10; A/HRC/23/NGO/4; A/HRC/22/NGO/31; A/HRC/21/NGO/77 and A/HRC/20/NGO/63

[2] Joselito Vásquez Jambo, José Eleuterio García Rojas, José Faustino Silva Sánchez, César Medina Aguilar (16 years old), José Antonio Sánchez Huamán

These facts directly violate the right to freedom of assembly, Article 20 of the Universal Declaration of Human Rights.

On 7th January, 2014, the Prosecution of Chiclayo, according to REGULATION 4 CASE 1914-2012, archived the case of those killed in Celendin - constituting a worrying precedent in the Peruvian justice as the murderers remain unpunished.

Additionally, Yanacocha is in the process of bringing the Chaupe family to trial – a family who are the rightful owners of land where the mining project would be carried out. Currently, the trial has been postponed due to a change of judge and should resume 10th March, 2014.

The two cases before the Inter-American Court of Human Rights - one concerning the criminalization of social protest and the agreements between mining companies and police filed by the Plataforma Interinstitucional Celendina (PIC) and Grufides, and the other for the case of Conga presented specifically by the Confederación Unitaria de las Rondas campesinas del Perú, are awaiting resolution.

For numerous months now, the ronderos (peasant patrolmen) have been intimidated and prosecuted in order to undermine the social base of the resistance as the ronderos are active participants in the resistance against the Conga mining project. In Celendín on 30th November, 2013, the government led a parallel congress of the rondas campesinas (organization of peasant patrols) which was rejected by the true rondas campesinas. The conference was a resounding failure. Manager of Environmental Affairs of the Presidency of the Council of Ministers, Vladimiro Huaroc said on 13th January 2014 in the newspaper La República that "we must restore order in Cajamarca because the rondas campesinas are in collusion with drug trafficking."

Furthermore, Anonymous Peru, who hacked the server of the Interior Ministry on 26th December 2013, brought to light an espionage operation against the political and environmental leaders of Cajamarca - a violation of human rights given that no person should be monitored without court approval.

Anonymous Peru also unveiled plans for the installation of police bases in the area. This constitutes a serious threat to the integrity of individuals as on 12th January, 2014 the government enacted Law 30151 which exempts the police and armed forces from criminal liability when using their weapons or other methods to cause injury or death while on duty.

On 16th January, 2014 thousands of people responded to the call of environmental organizations and gathered at the mountain lakes of Misacocha and El Perol, calling for the removal of the machinery of Yanacocha and expressing once again their profound opposition to the project. Infiltrators committed acts of vandalism such as setting fire to a guard's hut and toppling a transmitting antenna. The ronderos were accused by the tabloids (RPP, Peru 21, Canal N to date) as being responsible for these acts. The persecution of the rondas campesinas continues. The Special Operations Division of the National Police (DINOES), on site and at the service of the mine, fired shots into the air, fortunately without hurting anyone.

On 21st January, 2014 journalist César Estrada was charged for alleged theft and financial irregularities, a charge aimed to intimidate given the non-existence of evidence.

Both Minas Conga and Chadin 2 constitute projects that threaten the ecosystem and the right to water. They are costing lives, leaving many injured, others criminally charged and criminalizing the peaceful protest.

We call on the Human Rights Council to demand that the Peruvian State:

- Respect the fundamental economic, social and cultural rights of indigenous people, including their environmental rights;
- Respect the fundamental civil and political rights of indigenous people
- Respect the right of assembly, freedom of opinion and expression

- Respect the fundamental right to water and sanitation
- End the criminalization of protest and the military and police intervention
- Limit the use of force against peaceful demonstrations

Our organizations appeal:

- the Special Rapporteur on the rights of indigenous peoples
- the independent expert on the issue of human rights obligations related to the enjoyment of a clean, healthy, safe and sustainable environment
- the Special Rapporteur on the human right to water and sanitation,
- the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,
- the Special Rapporteur on the right to freedom of peaceful assembly and association,
- the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression
- and the Special Rapporteur on the situation of human rights defenders,

to direct their attention to the serious and persistent violations suffered by indigenous communities in Peru.

Alta Amazonia Celendin, Asociación española para el derecho internacional de los derechos humanos (AEDIDH), Association of International Lawyers, El Frente de Defensa de los Intereses de la Provincia Hualgayoc-Bambamarca, Grufides, La Plataforma Interinstitucional de Celendin, NGOs without consultative status, also share the views expressed in this statement.

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Written statement* submitted by Friends World Committee for Consultation, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Conscientious objection to military service

The right to conscientious objection to military service

Friends World Committee for Consultation (Quakers) would like to draw the Human Rights Council's attention to the negative implications for conscientious objectors to military service when there is no recognition of the right to conscientious objection in their countries or the provisions exclude some conscientious objectors. These implications include: punishment and discriminatory treatment; criminal prosecution; and lack of necessary identity documentation.

Punishment and discriminatory treatment of unrecognised conscientious objectors

The right to conscientious objection to military service has been recognised by the Council as derived from the right to freedom of thought, conscience and religion or belief.[1] Regrettably, not all States that retain a system of obligatory military service recognise the right to conscientious objection. Even where the right is recognised in principle, the provisions or the way they are applied may exclude some conscientious objectors. If the State does not recognise conscientious objectors and make provisions, those who refuse to perform military service may be classified as draft evaders or deserters and treated as such.[2] In such situations, conscientious objectors face a wide range of serious violations for their refusal to perform military service. These include:

- Criminal Prosecution
- Imprisonment
- Fines
- Consequences of having a criminal record
- Lack of necessary identification documentation
- Restrictions on enjoyment of civil rights
- Limited employment opportunities
- Inability to access or complete education
- Difficulty in leaving the country, which can deprive them of their right to seek asylum

Criminal prosecution and consequences of having a criminal record

Unrecognised conscientious objectors may be prosecuted and imprisoned for their refusal of military service. This may result in criminal records, leading to lifelong societal and economic disadvantages. The Human Rights Committee has expressed concern that "convicted conscientious objectors bear the stigma of a criminal record".[3]

Some States still expect persons to perform military service after punishment for refusal, which amounts to coercion to change one's religion or belief. Those who persist with their objection risk being convicted and sentenced multiple times for the same offence, in breach of the principle of *ne bis in idem*.[4]

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1 Human Rights Council resolution 24/17 (A/HRC/24/17) of 27 September 2013.
See also: Human Rights Committee General Comment No. 22 (CCPR/C/21/Rev.1/Add.4 of 30 July 1993), 'The right to freedom of thought, conscience and religion or belief (Article 18)'.

2 European Court of Human Rights Chamber II *Erçep v Turkey*, application no. 43965/04 (22 November 2011).
European Court of Human Rights Grand Chamber, *Bayatyan v Armenia*, application no. 23459/03 (20 July 2011).

3 Human Rights Committee, Concluding Observations on Republic of Korea (CCPR/C/KOR/CO/3 of 28 November 2006), para.17.

4 Human Rights Committee General Comment No. 32 (CCPR/C/GC/32 of 23 August 2007), 'Right to equality before courts and tribunals and to a fair trial (Article 14)'.

Conscientious objectors with criminal records are particularly disadvantaged in terms of employment opportunities. For instance, they may not be eligible to be appointed to public office or find work with private employers.[5] A representative of the Jehovah's Witness, a religious group known for their conscientious objection to military service, suggests that it is thus "nearly impossible" for conscientious objectors with a criminal record to find employment, particularly in the public sector or with larger corporations.[6]

Conscientious objector, Iakovos Thlimmenos, was disbarred from practicing as an accountant because he had a criminal conviction for a "serious crime", after he disobeyed an order to wear military uniform.[7] Whilst acknowledging that States may exclude some offenders from certain professions, the European Court of Human Rights considered, however, that "a conviction for refusing on religious or philosophical grounds to wear the military uniform cannot imply any dishonesty or moral turpitude likely to undermine the offender's ability to exercise this profession".[8] It was found that Thlimmenos was a victim of discrimination and there had been a violation of his right to freedom of thought, conscience and religion.[9] Following the judgement, the State provided for the deletion of convictions resulting from conscientious objection to military service.[10] The Human Rights Committee has also called on States to expunge criminal records when convictions resulted from conscientious objection to military service.[11]

Lack of military or other identity documentation

To ensure citizens comply with military service requirements, governments often use a system of military documentation. Known in Latin America as the *libreta militar*, a certificate of military service is issued in other regions, notably Eastern Europe. This acts as proof that an individual has adhered to military service requirements, but is often also an essential document necessary to enjoy basic rights. Military documentation is used as a form of identity documentation in itself or can be integrated into the national system of identity documentation. Alternatively, military documentation is sometimes required in order to be issued with identity documents, such as identity cards or passports.

Conscientious objectors may be unable to obtain military documentation, and therefore necessary identity documentation, because they have not complied with military service requirements, if there is no or inadequate provision for conscientious objection. Sometimes conscientious objectors are entitled to identity documentation, even without military documentation, but cannot obtain such documents in fear of alerting the authorities to their presence, thereby risking arrest and forced recruitment.

Without military or other identity documentation, conscientious objectors may be unable to:

- Own property[12]
- Open a bank account[13]
- Register residency[14]

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5 *Eu-min Jung et al v Republic of Korea* (CCPR/C/98/D/1593-1603/2007 of 14 April 2010), para.5.6.

6 Dae-il Hong, representative of the Republic of Korea office of Jehovah's Witnesses cited in "Injustice in South Korea Causes International Outcry" (1 October 2013).

7 European Court of Human Rights Grand Chamber, *Thlimmenos v Greece*, application no. 34369/97 (6 April 2000).

8 Ibid, para.47.

9 Violation of article 14, non-discrimination, taken in conjunction with article 9, freedom of thought, conscience and religion, of the European Convention on Human Rights.

10 Article 27 of Law 2915/2001, Greece

11 *Atasoy and Sarkut v Turkey* (CCPR/C/104/D/1853-1854/2008 of 19 June 2012), para.12.
Kim et al v Republic of Korea (CCPR/C/106/D/1786/2008 of 1 February 2013), para.9.

12 Conscience and Peace Tax International (CPTI) (2010) *UPR Submission: Turkey.* 8th Session, May 2010.
United States (US) Commission on International Religious Freedom (2013) *Annual Report: Eritrea.*

13 CPTI (2010) *UPR Submission: Turkey.* 8th Session, May 2010.

- Vote or be eligible for election[15]
- Obtain or replace birth registration documentation as an adult[16]
- Register marriage[17]
- Legally recognise their child[18]
- Obtain employment, especially in the public sector[19]
- Matriculate, graduate or obtain a degree from university[20]
- Leave the country[21]

These restrictions have a number of negative implications for conscientious objectors and their families, including an inability to find work legally. This means that conscientious objectors often live excluded from the formal economy. Restrictions on leaving the country not only deprive conscientious objectors of their right to freedom of movement, but also make it more difficult to flee and seek asylum, if they have a well-founded fear of persecution. In addition, limitations on civil registration can put individuals and their children at risk of statelessness. Some ethnic or religious groups have had their citizenship revoked or withheld, on the grounds that they have refused or avoided military service.[22] In another case, a religious minority group was banned and one of the primary reasons given was conscientious objection to military service.[23]

Other forms of discrimination

Conscientious objectors face other forms of formal and informal discrimination. They may have to pay higher taxes and could lose their eligibility to state subsidies and social security.[24] In addition, conscientious objectors may face

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14 CPTI (2012) *Armenia: conscientious objection to military service and related issues.* Submission to the 105th Session of the Human Rights Committee: July 2012.

15 Human Rights Committee, Concluding Observations on Turkey (CCPR/C/TUR/CO/1 of 13 November 2012).
Ministerio de Defensa del Estado Plurinational de Bolivia (2012) *Generalidades: Servicio Militar*, p.18.

16 Ministerio de Defensa del Estado Plurinational de Bolivia (2012) *Generalidades: Servicio Militar*, p.18.

17 CPTI (2012) *Armenia: conscientious objection to military service and related issues.* Submission to the 105th Session of the Human Rights Committee: July 2012.
European Court of Human Rights Chamber II *Ülke v. Turkey*, application no. 39437/98 (24 January 2006)
US Commission on International Religious Freedom (2013) *Annual Report: Eritrea.*

18 European Court of Human Rights Chamber II *Ülke v. Turkey*, application no. 39437/98 (24 January 2006)

19 Article 36 of Law 48/1993, as amended by Decree 2150/1995, Colombia as cited in War Resisters' International (2009) *Conscientious Objection in Colombia.*
CPTI (2012) *Armenia: conscientious objection to military service and related issues.* Submission to the 105th Session of the Human Rights Committee: July 2012.
CPTI (2008) *UPR Submission: Turkmenistan* 3rd Session, December 2008.

20 CPTI (2010) *Colombia: Conscientious objection to military service and related issues.* Submission to the 99th Session of the Human Rights Committee: July 2010.
CPTI (2005) *Military recruitment and conscientious objection: a thematic global survey (*Yemen*)*, p.24.
International Fellowship for Reconciliation (IFOR) and CPTI (2013) *Submission to the 109th Session of the Human Rights Committee: Bolivia.*

21 IFOR and CPTI (2013) *Submission to the 109th Session of the Human Rights Committee: Bolivia.*
Joint Statement*: Solidarity with Egyptian conscientious objectors, Emad el Dafrawi and Mohamed Fathy*. 10 November 2013.
Netherlands: Ministry of Foreign Affairs (2001) *Turkey/Military Service.*
US Department Of State (2012) *Country Reports on Human Rights Practices: Eritrea.*
War Resisters' International (2005) *Conscientious objection to military service in Greece: Human Rights shortfalls.* Submission to the 83rd Session of the Human Rights Committee: February 2005

22 Refugees International (2009) *Nationality rights for all (*Azerbaijan*).*
US Department Of State (2012) *Country Reports on Human Rights Practices: Eritrea.*

23 US Commission on International Religious Freedom (2013) *Annual Report: Tajikistan.*

24 CPTI (2005) *Military recruitment and conscientious objection: a thematic global survey* (Singapore, Colombia and Switzerland), pp.24.34.35.

problems securing employment, beyond the question of having a criminal record or lack of documentation. They may be deprived of licences and official business permits, or may not be eligible to work in public organisations, the civil service or police.[25] Discrimination against conscientious objectors may also happen informally. In practice, employers may include military service in job specifications and as a condition for acceptance, creating a subtle form of discrimination based on the grounds that, without military experience, conscientious objectors do not have necessary skills or qualities.[26]

Recommendations

FWCC (Quakers) calls on the UN Human Rights Council to:

i. continue to pay attention to the protection and promotion of the right to conscientious objection to military service;

ii. specifically include the promotion and protection of the rights of conscientious objectors to military service in relation to relevant thematic resolutions; and to

iii. urge States to

a) fully implement the right of conscientious objection to military service in law and practice;

b) cease prosecuting and imprisoning all conscientious objectors;

c) release immediately imprisoned conscientious objectors and expunge their criminal records;

d) provide conscientious objectors with the necessary documentation to interact with the State and enable full access to education and employment; and to

e) prohibit discrimination against conscientious objectors, in law and practice, in relation to their terms or conditions of service, or any civil, political, economic, social or cultural rights.

CPTI (2010) *Israel: Conscientious objection to military service and related issues.* Submission to the 99th Session of the Human Rights Committee: July 2010.
Lawyer Hülya Üçpınar: Ref 39437/98, 24/01/2006 *Ülke Judgment (Turkey)*, Final on 24/04/2006. (September 20 2012)
"Solomon Amendment" to Section 12(f), Military Selective Service Act, US, of September 1982.
US Department Of State (2012) *Country Reports on Human Rights Practices: Eritrea.*

[25] Articles 76 and 93(1) of The Military Service Act, Republic of Korea as cited in Kuk Cho (2007) "Conscientious Objection to Military Service in Korea: The Rocky Path from Being an Unpatriotic Crime to a Human Right" in *Oregon Review of International Law* Vol.9.
CPTI and IFOR (2012) *Joint UPR Submission: Republic of Korea* 14th session, October 2012.
European Commission (2009) *Developing anti-discrimination law in Europe* (Slovenia), p.67.
US Department Of State (2012) Country Reports on Human Rights Practices: Eritrea.

[26] ADALAH (2010) NGO Report to the UN Committee on Economic, Social and Cultural Rights Regarding Israel's Implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR).
Hannah Brock (2012) 'Conscientious objectors' in *The Friend* Vol.170 No.51, pp.10-11.

United Nations A/HRC/25/NGO/33

General Assembly

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21 February 2014

English, French and Spanish only

Human Rights Council
Twenty-fifth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Joint written statement* submitted by Centre Europe - Tiers Monde - Europe-Third World Centre, non-governmental organization in general consultative status, France Libertes : Fondation Danielle Mitterrand, Women's Human Rights International Association, non-governmental organizations in special consultative status, Indian Council of South America (CISA), International Educational Development, Inc., Mouvement contre le racisme et pour l'amitié entre les peuples, non-governmental organization on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[14 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.14-11161

1411161

Please recycle

The lack of access to drinking water for the most vulnerable part of the population has worsened, because the Colombian State refuses to meet its obligations in this respect

The Universal Declaration of Human Rights recognizes each person's fundamental right to a decent standard of living, including access to drinking water and sanitation.

Since then, this subject has become a priority within the framework of various instruments of International Human Rights Law, such as the International Covenant on Economic, Social and Cultural Rights ; the San Salvador Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights (Art.11) ; the Convention on the Elimination of all Forms of Discrimination against Women and the General Observations n° 6, 14 and 15 of the Committee on Economic, Social and Cultural Rights.

Further, the recognition of this issue is to be found in the Resolution A/RES/64/292 passed by the United Nations General Assembly and the Resolution A/HRC/RES/15/9 adopted by the Human Rights Council.

However, according to the Report for the Universal Periodic Review of Colombia[1], the Colombian State has not guaranteed, especially in the poorest areas, access to drinking water or sanitation supply. Over 9 million people do not have access to a safe drinking water supply and over 13.5 million do not have access to sanitation. It is estimated that over 970,000 children aged from 0 to 4 years old do not have access to safe drinking water and only 49% of households have access to both supplies.

In the city of Medellin alone, 27,936[2] families no longer have access to their water supply, because they cannot afford it. Most of these families live in dismal economic and social conditions and do not have sufficient resources to keep themselves going. There are about another 33,000[3] families living in areas which are high-risk in terms of housing conditions and who have neither drinking water nor proper sanitation, although these areas are mainly populated by "displaced" people who are victims of the Colombian armed conflict.

The extreme poverty in which thousands of families live is the main cause of their lack of access to drinking water. 76% of Medellin's citizens belong to the socio-economic levels* 1, 2 and 3[4], which means that they lack many basic needs and a large proportion of them are unemployed.

Beyond the numbers, it is important to emphasize the human drama that people who do not have access to drinking water experience. Women spend most of their time looking for ways to obtain some of the precious liquid. Their children do not attend school regularly, because they also have to participate to this task or because they cannot get bathed or have a decent breakfast before leaving for school. People's dignity is thus affected, since they are reduced to dependence on other people's charity to obtain the least drop of water. The Committee on Economic, Social and Cultural Rights has recognized that the Human Right to water is essential in order to live decently and that this right is the preliminary condition to the enjoyment of other Human Rights[5].

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[1] Situation of Human Rights and Humanitarian Rights in Colombia from 2008 to 2012 Published May 2013

[2] Empresas Publicas de Medellin. Report on users, September 2013.

[3] Ibid

[4] The socio-economic levels are a tool used by the Columbian State to classify residential buildings. They include the owners' incomes and the supply of public services to their homes, amongst other data. There are 6 levels according to Columbian law, going from level 1 which is the lowest to level 6 which is the highest.

[5] Quality of Life Survey in 2011. Published by the Medellin City Council. Nominal questions which refer to the application of the International Pact for Economic, Social and Cultural Rights. General Observation number 15 (2002), E/C.12/2002/11

It is important to point out that the company which is responsible for the public services brought to housing in Medellin is a state-run company known as one of the best-run companies in Latin America. In 2012, the EPM group (Empresas Publicas de Medellin) made a net profit of 903 billion US dollars[6]. So, while this company is expanding in the high-risk areas of the city, poverty is increasing and the State sits back and refuses to enstate an efficient policy for guaranteeing poor people's access to water supply and basic sanitation, which is vital for every human being.

Articles 2, 311, 365 and 366 of the Colombian Constitution specify that social services are closely linked to the State's social agenda and that their main objective is to find solutions to people's needs in terms of health, education, safe environment and drinking water. In this text, towns are defined as territorial entities whose main obligation is to ensure water supply and basic sanitation to each and every inhabitant of its territory. So, it's up to each town as a responsible entity in this political and administrative division of the State, to supply public services.

The Constitutional Court, which is the highest institution in charge of the protection of fundamental rights, has several times asked the State to respect Human dignity and take the necessary measures, in order to enable the poorest and most exposed people to gain access to the basic services which are water and sanitation.

So the Court drew up the T-546 the following decision, in 2009:

"This court forbids companies in charge of supplying services to homes from cutting off water supplies in homes where there are children under 18; when parents (who are the people directly responsible for them) of children under 18 do not have the financial capacity to pay for the public services to their homes, this puts the children in a very fragile position. When families, or persons responsible for the child or children, are not in a position to supply themselves with the absolute minimum amount of water, it is up to the State to guarantee this supply."

The Court stipulated, with the T-717 decision in 2010, that this company (the Medellin Water Board) and the City Council must allow people with very low incomes to access these services and this right may not be subordinate to the financial capacity of the customers. This applies, especially when it concerns people who are in such dire straits that they can no longer access either of these services or, indeed, any other fundamental rights.

The jurisprudence created by the Constitutional Court has allowed the Municipal Council of Medellin to promulgate the 006 Agreement in 2011, in which there is a minimum monthly supply of 2,500 litres of drinking water guaranteed to people who are level 1 and 2 with Sisben registration[7]. Although this generosity might be considered to be an advance in the protection of the weakest, it is only a small progress, since it doesn't cover nor include people whose homes have been cut off from their supply system.

If the city of Medellin refuses to take specific sectors into account in its plan of public spending, it will contribute, de facto, to the decline in living conditions and the marginalization of its inhabitants. It will also contribute to the privatization of public property such as drinking water. It will lead to a situation where most poor people will only be able to depend on their financial situation to access (or not) basic services. At the same time, the State's responsibility won't be put into question, when these people's rights are denied. If the EPM company restored the supply of drinking water to those people who are cut off, due to non-payment, it would cost them about 32 billion pesos[8]. This represents less than 0.6% of their profit forecast for 2014, which have been estimated at 5.5 trillion pesos[9].

We hereby ask the Colombian State to:

- Respect the Human Right to access to drinking water and sanitation.

[6] "El Tiempo" newspaper, dated 23rd April 2013.

[7] Method of identifying poverty and of focalising priorities.

[8] http://mesainterbarrialdedesconectados.blogspot.com/2012/02/httpcjlibertad.html#more

[9] http://www.medellin.gov.co/irj/portal/ciudadanos?NavigationTarget=navurl://db3bf72492bb12149471ade27cae0491

- Honour the decisions of the Constitutional Court, such as the 2009 T-546 and the 2010 T-717, which demand the protection of our Human Right to drinking water.
- Protect children's access to basic services, such as drinking water and sanitation.
- Make sure that adequate budgets are assigned by law to promote access to public services in all households,
- Endeavour to stop discriminating poor families regarding their access to drinking water, which is their Human Right.
- Take steps to effective access to the right to drinking water and that access is progressive, since the maximum of available resources will be devoted to solving this problem.

Our organizations appeal:

- The Special Rapporteur on the human right to safe drinking water and sanitation
- The Special Rapporteur on adequate housing
- The Special Rapporteur on extreme poverty and Human Rights
- The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health
- The Independent Expert on human rights and the environment

to pay special attention to the serious and repeated violations of rights of persons who do not benefit from public services at home.

Asociación española para el derecho internacional de los derechos humanos (AEDIDH), Association France Amérique Latine (FAL) and Association of International Lawyers NGO(s) without consultative status, also share the views expressed in this statement.

United Nations A/HRC/25/NGO/34

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Human Rights Council
Twenty-fifth session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Written statement* submitted by The European Centre for Law and Justice, Centre Europeen pour le droit, les Justice et les droits de l'homme, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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1411157

Please recycle

Implementation of the recommendations contained in the report of the independent international fact-finding mission on the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem (A/HRC/22/63)

The European Centre for Law and Justice (ECLJ) wishes to express its appreciation for the opportunity to submit relevant information with citations with respect to the above topic. By way of introduction, the ECLJ is an international, Non-Governmental Organisation dedicated to the promotion and protection of human rights and to the furtherance of the rule of law in international affairs. The ECLJ has held Special Consultative Status before the United Nations/ECOSOC since 2007[1]. The ECLJ is concerned that Israel is being wrongly and unfairly singled out for special scrutiny and criticism, despite an immeasurably better record of compliance with international law and its norms than many other states which continually elude the attention of the UNHRC[2].

Introduction:

The ECLJ submits the following to the Council. First, the ECLJ will discuss the basis under international law that permitted, and continues to permit, the establishment of Jewish settlements throughout the territory that comprised the Palestinian Mandate. Second, the ECLJ will show that the language of UN Security Council Resolution 242 and follow-on resolutions anticipated adjustment of the 1949 armistice lines to achieve defensible borders for the State of Israel. Until such adjustment is accomplished, one simply cannot legally, or logically, assert which territory in the West Bank and Gaza Strip "belongs" to a future state of Palestine. Hence, the phrase "occupied Palestinian territory" characterises as fact what its proponents desire to be fact.

Legal Status of Israeli Settlements under International Law:

West Bank Settlements[3]

The issue of Israeli settlements in the West Bank is hardly new—in fact, it is over forty years old. Further, declaring that Israeli settlements are in "occupied Palestinian territory" is factually inaccurate and legally questionable. The main argument repeatedly raised against Israeli "settlements" is that they violate Article 49(6) of the Fourth Geneva Convention of 1949, which states: "The occupying power shall not deport or transfer parts of its own civilian population into territories it occupies"[4]. Yet, the cited provision presupposes the "occupation" of the territory of a High Contracting

[1]NGO Branch, U.N. Dep't of Econ. & Soc. Affairs, Consultative Status for the European Centre for Law and Justice (2007), http://esango.un.org/civilsociety/ (accessed by searching "European Centre for Law and Justice" in the iCSO Database).

[2]Since 2006, for example, the UNHRC has adopted no fewer than forty-three resolutions alleging various violations against Israel. Such anti-Israel bias has even been noted and condemned by two UN Secretaries- General. For example, shortly after the UNHRC's creation, then-UN Secretary-General Kofi Annan complained: "Since the beginning of [the UNHRC's] work, they have focused almost entirely on Israel, and there are other crisis situations, like Sudan, where they have not been able to say a word." Benny Avni, Annan Criticizes Human Rights Council's Resolutions on Israel, Darfur Crisis, N.Y. Sun (29 Nov. 2006), http://www.nysun.com/foreign/annan-criticizes-human-rights-councils/44260/. More recently, UN Secretary General Ban Ki-moon also criticized the UNHRC for singling out Israel: "The Secretary-General is disappointed at the [UNHRC's] decision to single out only one specific regional item, given the range and scope of allegations of human rights violations throughout the world." U.N. Secretary-General, Secretary-General Urges Human Rights Council to Take Responsibilities Seriously, Stresses Importance of Considering All Violations Equally, U.N. Doc. SG/SM/11053 (20 June 2007).

[3]Since Israel has completely withdrawn from the Gaza Strip, the issue of settlements there has become moot. See infra note 13.

[4]Geneva Convention Relative to the Protection of Civilian Persons in Time of War, art. 49, para. 6, 12 Aug. 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287. It is also questionable whether Article 49 applies when a government takes no action to move its population, but the population moves itself based on individual choices. The words "deport" and "transfer" imply coercive governmental action, not passive acquiescence or private choices.

Party (a state party to the Convention)[5] whereas the territory in question never has belonged to any state. In the absence of a prior sovereign, the Fourth Convention does not apply to the Israeli presence in the West Bank[6].

Moreover, Israel has legitimate claims to West Bank territory and, thus, is not and cannot be considered an occupier. The most accurate term to describe the status of the West Bank is "disputed territory"—a position Israel has continuously asserted since 1967. The following brief historical analysis buttresses the Israeli position further.

First, one must note that Article 6 of the British Mandate permitted Jewish settlement throughout the territory of the Palestinian Mandate[7], territory that encompassed the current State of Israel, a slice of the Golan Heights (ceded by Great Britain to the French Mandate of Syria in 1923)[8], the West Bank, and the Gaza Strip[9]. The State of Israel was established in 1948 on part of the territory of the Mandate, but, regarding the remainder of the territory, i.e., the West Bank and Gaza Strip, nothing has extinguished the terms of the Mandate for Palestine; its terms are still valid under international law[10] and will remain so until a binding final status arrangement comes into effect. As such, the Jewish population of the Palestinian Mandate (present-day Israelis) have at least as much claim to the remaining unallocated territories as do its Arab residents. Hence, labeling Israel's presence in the West Bank as "occupying" Palestinian (by which is meant Arab) territory is, at best, questionable and, at worst, simply untrue.

Historically, when Great Britain informed the UN in 1947 that it was going to withdraw its forces from Palestine in 1948, the UN General Assembly decided upon a plan to partition Palestine into an Arab state, a Jewish state, and an area under international control[11]. Jewish Palestinians accepted the plan, whereas Arab Palestinians rejected it. Following the British withdrawal in 1948, the newly proclaimed Jewish Palestinian State, called Israel, was immediately attacked by its Arab neighbors. The war continued into 1949, when a series of armistice agreements was signed[12].

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[5]See id. art. 2.

[6]It should be noted, however, that as a matter of domestic legal policy, Israel applies the humanitarian provisions of the Fourth Geneva Convention de facto despite the fact that they do not apply de jure.

[7]Mandate for Palestine, League of Nations Doc. C.529.M.314.1922.VI (1922). The text of Article 6 reads as follows: "The Administration of Palestine, while ensuring that the rights and position of other sections of the population are not prejudiced, shall facilitate Jewish immigration under suitable conditions and shall encourage, in co-operation with the Jewish agency referred to in Article 4, close settlement by Jews on the land, including State lands and waste lands not required for public purposes".

[8]Martin Gilbert, The Routledge Atlas of the Arab-Israeli Conflict 8 (9th ed. 2008).

[9]Trans-Jordan was separated from the Mandate and designated by the British as an exclusively Arab homeland in 1921.

[10]In issuing several decisions and advisory opinions on Namibia, the International Court of Justice declared that a League of Nations Mandate "is a binding international instrument like a Treaty, which continues as a fiduciary obligation of the international community until its terms are fulfilled." Eugene V. Rostow, Palestinian Self-Determination: Possible Futures for the Unallocated Territories of the Palestine Mandate, 5 Yale Stud. World Pub. Order 147, 157 (1979). Specifically, the Court opined that

[T]he League of Nations was the international organization entrusted with the exercise of the supervisory functions of the Mandate. Those functions were an indispensable element of the Mandate. But that does not mean that the mandates institution was to collapse with the disappearance of the original supervisory machinery. To the question where the continuance of a mandate was inseparably linked with the existence of the League, the answer must be that an institution established for the fulfillment of a sacred trust cannot be presumed to lapse before the achievement of its purpose. The responsibilities of both mandatory and supervisor resulting from the mandates institution were complementary, and the disappearance of one or the other could not affect the survival of the institution.

Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276, Advisory Opinion, 1971 I.C.J. 16 ¶ 55 (21 June 1971). Similarly, "the Palestine Mandate survived the termination of the Mandate administration as a trust under Article 80" of the U.N. Charter. Eugene V. Rostow, Palestinian Self-Determination: Possible Futures for the Unallocated Territories of the Palestine Mandate, 5 Yale Stud. World Pub. Order 147, 158–59 (1979). Article 80 states that "nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any states or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties." U.N. Charter art. 80.

[11]G.A. Res. 181(II), U.N. Doc. A/RES/181 (29 Nov. 1947).

[12]General Armistice Agreement art. 5, para. 1, Isr.-Syria, 20 July 1949, 42 U.N.T.S. 327 (noting that the armistice line does not enshrine an "ultimate territorial arrangement[]"); General Armistice Agreement art. 6, para. 9, Isr.-Jordan, 3 Apr. 1949, 42 U.N.T.S. 303 (noting that the armistice line is "without prejudice to future territorial settlements or boundary lines"); General Armistice Agreement art. 4, para. 2, Isr.-Leb., 23 March 1949, 42 U.N.T.S. 287 (noting that the "basic purpose" of the armistice line is to

The resulting 1949 armistice lines, which delimit the so-called West Bank and Gaza Strip (often referred to as the pre-'67 lines), have never been regarded as international boundaries. In fact, it was at Arab insistence that the 1949 lines be designated as mere armistice lines, not international boundaries, because the Arab world did not want to confer any form of international legitimacy on the newly proclaimed Jewish State of Israel. From 1949 until 1967, the portions of Palestine not under the control of Israel remained under military rule by Jordanian and Egyptian armed forces, respectively. No Arab Palestinian state was ever created in the West Bank or Gaza Strip between the 1948–49 and the 1967 Arab-Israeli wars, and no Arab Palestinian state has been created in any territory of Palestine since 1967, although Israeli leaders have expressed support for the position that an Arab Palestinian state may someday be created in parts of the West Bank and Gaza Strip[13] pursuant to direct negotiations between Israel and Palestinian authorities.

Resolution 242 and its Progeny Foresee Adjustment of the 1949 Armistice Lines:

As a result of the 1967 Arab-Israeli war, Egyptian forces withdrew from the Gaza Strip, Jordanian forces withdrew from the West Bank, and Israel acquired control of both territories[14]. Following the 1967 war, the UN Security Council adopted Resolution 242[15]. Note, first, that the language in that Resolution requires that Israel withdraw "from territories"[16] it captured—not from "the" territories or "all the" territories it captured. We know from historical record that these were intentional omissions from the language of the Resolution. Lord Caradon, then Permanent Representative of the United Kingdom to the United Nations and chief drafter of Resolution 242, aptly noted the following:

> Much play has been made of the fact that we didn't say "the" territories or "all the" territories. But that was deliberate. I myself knew very well the 1967 boundaries and if we had put in the "the" or "all the" that could only have meant that we wished to see the 1967 boundaries perpetuated in the form of a permanent frontier. This I was certainly not prepared to recommend[17].

Note, second, that the Resolution requires "secure . . . boundaries"[18]—something that did not exist prior to 1967 as evidenced by the persistent attacks mounted against Israel from Arab-controlled territory and would not exist today if the status quo ante were reinstated.

Note, third, that the Resolution calls for the termination of all "states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area . . ."[19]. None of that occurred following the 1967 war, nor has it occurred to this day.

Once Israel acquired political control over the West Bank, it made a policy decision to exercise authority in accordance with the humanitarian provisions of the Fourth Geneva Convention, not pursuant to the Fourth Convention per se, since, under the circumstances, it had no obligation to apply the Fourth Convention at all[20]. Given Resolution

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"delineate the line beyond which the armed forces of the respective Parties shall not move"); General Armistice Agreement art. 5, para. 2, Isr.-Egypt, 24 Feb. 1949, 42 U.N.T.S. 251 (noting that the armistice line is "not to be construed . . . as a political or territorial boundary" and that the line is "delineated without prejudice" to the "ultimate settlement of the Palestine question").

[13]Note that all Israeli armed forces and settlers were removed from the Gaza Strip in 2005. Settlers Protest at Gaza Pullout, BBC (15 Aug. 2005), http://news.bbc.co.uk/2/hi/middle_east/4150028.stm. Hence, the issue of Israeli settlements in the Gaza Strip is now moot.

[14]Israel also acquired control over the Sinai Peninsula and the Golan Heights. Neither the Sinai Peninsula nor the Golan Heights is relevant to this discussion.

[15]S.C. Res. 242, U.N. Doc. S/RES/242 (22 Nov. 1967).

[16]Id. at 1(i).

[17]Yoram Meital, Egypt's Struggle for Peace: Continuity and Change, 1967–1977 49 (1997).

[18]S.C. Res. 242, supra note 15, at 1(ii).

[19]Id. Note also that the language does not refer at all to the Palestinians, since there was no Palestinian "state" at the time, and no Palestinian "state" currently exists.

[20]See, e.g., Avinoam Sharon, Keeping Occupied: The Evolving Law of Occupation, 1 Regent J. L. & Pub. Pol'y 145, 153–54 (2009). Sharon writes:

Upon assumption of control of the territories, Israel had to make a decision as to the applicable law. There were several reasons for Israel not to wish to view the captured territories as occupied, and therefore subject to the provisions of the Fourth Geneva

242, which foresaw border (and, thus, territorial) adjustments, and legitimate Israeli claims to (at least some) portions of the captured territories, Israel's decision to apply only the humanitarian portions of the Fourth Convention was both logical and reasonable at the time and remains so today.

Following the 1973 Arab-Israeli war, the UN Security Council adopted Resolution 338, which essentially reiterates the call to implement the terms of Resolution 242[21]. Since Resolutions 242 and 338 anticipate negotiated territorial adjustments, it is simply incorrect to conclude that Israel is an occupying power. In short, Israel has an outstanding, valid, internationally-sanctioned claim to (as yet undefined) portions of the so-called "occupied territories". Once the contours of a future Arab Palestinian state are negotiated directly between Israelis and Palestinians, Israeli control and administration of land that ultimately forms the future Palestinian state will cease, and the issue of settlements will be moot.

Conclusion:

In sum, the following must be reiterated. First, the Mandate for Palestine was, and remains, a part of international law. Second, the Mandate expressly permitted Jews to settle throughout Palestine. Third, the Jews continue to possess their right to settle throughout Palestine. Hence, until a final agreement is negotiated between Israelis and Palestinians, the Jewish people have the right to settle throughout the territory of the Palestinian Mandate, including the West Bank and East Jerusalem. To state otherwise is a misrepresentation of international law.

Convention. From a legal standpoint, Israel took the view that in the absence of a prior sovereign, Israel's control of the West Bank and Gaza did not fall within the definition of "occupation" inasmuch as a fundamental premise of the law of occupation—a prior legitimate sovereign—was lacking.

Israel's argument concerning de jure application of the law of occupation did not, however, deter it from declaring its intention to act in accordance with customary international law and the humanitarian provision of the Fourth Geneva Convention . . . . This intention seems consistent with the view of [Yehuda Z.] Blum:

The conclusion to be drawn from all this is that whenever, for one reason or another, there is no concurrence of a normal "legitimate sovereign" with that of a "belligerent occupant" of the territory, only that part of the law of occupation applies which is intended to safeguard the humanitarian rights of the population.

Id. (quoting Yehuda Z. Blum, The Missing Reversioner: Reflections on the Status of Judea and Samaria, 3 Is. L. Rev. 279, 294 (1968)).

[21]S.C. Res. 338, ¶ 2, U.N. Doc. S/RES/338 (22 Oct. 1973).

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Human rights situations that require the Council's attention

Written statement* submitted by the European Centre for Law and Justice, Centre Europeen pour le droit, les Justice et les droits de l'homme, a non-governmental organization in special consultative status

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Ongoing violations of human rights by the Islamic Republic of Iran: The case of Saeed Abedini

The United Nations (UN) has long committed to defending human rights and fundamental freedoms among its member states. The UN has successfully urged many of its member states to recognise the paramount importance of human dignity by signing international covenants such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). In the interest of defending human dignity, these important international covenants oblige signatory nations to defend basic rights and freedoms such as equality under the law, the right to a fair and public trial, and freedom of religious belief and expression.[1] As a signatory to both of these covenants, the Islamic Republic of Iran has obliged itself to defend these principles.

Like most of the UN's member states, the Islamic Republic of Iran boasts a Constitution that proudly incorporates basic human rights. However, the reality is that many of the rights and protections enumerated in the Iranian Constitution have been consistently denied to Iranian citizens who are members of religious minorities. For decades, the Islamic Republic of Iran has treated members of religious minorities as second-class citizens, denying many of them their most basic rights and freedoms. As the government represses its people's rights to religious belief and expression, the loss of other fundamental rights and freedoms routinely follows. This pattern has proved especially true in the case of Pastor Saeed Abedini.

Saeed Abedini (also known as Saeed Abedinigalangashi) is a Christian with dual United States-Iranian nationality. He has been imprisoned in the Islamic Republic of Iran since 26 September 2012, solely for encouraging peaceful assemblies of Christians in private homes, an activity that is protected under the Iranian Constitution. The Revolutionary Guard arrested Saeed when he was visiting Iran to finish establishing an orphanage outside the city of Rasht. He was not at that time violating, nor did he ever violate, any law of the Islamic Republic of Iran. Since his arrest, Saeed has been (1) given an unfair trial before a notoriously biased judge; (2) falsely convicted of intentionally undermining Iran's national security based solely on the exercise of his fundamental freedoms; (3) sentenced to eight-years' imprisonment for exercising his Christian faith; (4) physically beaten and psychologically abused; (5) threatened with death; and (6) repeatedly denied necessary medical attention. (The ECLJ obtained this information from direct sources). These abuses demonstrate that, since depriving Saeed of his religious freedom, the Islamic Republic of Iran has continued to deprive him of a fair trial and is subjecting him to degrading treatment.

Recently, in November of 2013, Saeed was transferred from Evin Prison in Tehran, Iran, to Rajai Shahr Prison in Karaj, Iran, where his physical condition has deteriorated. Inmates at Rajai Shahr are largely unmonitored within the prison walls, to the extent that murders and robberies among prisoners are commonplace. Though a prisoner of conscience, the authorities originally placed Saeed in a ward where violent criminals repeatedly robbed him and threatened him at knifepoint. Saeed continues to suffer from internal injuries resulting from beatings he endured in Evin prison. Prison doctors have determined Saeed needs surgery, but, to date, the judiciary has denied Saeed access to the medical care necessary to treat his serious injuries. This inhumane treatment would be an egregious violation of the human dignity for any person, but is doubly deplorable when directed at a man whose only crime was the peaceful exercise of his faith in a nation whose laws protect his right to do this.

Article 23 of Islamic Republic of Iran's Constitution declares that "the investigation of individuals' beliefs is forbidden and no one may be molested or taken to task simply for holding a certain religious belief"[2]. In addition to providing religious freedom generally, the Constitution also specifically recognises Zoroastrians, Jews, and Christians as official religious minorities who are free to "perform their religious rites and ceremonies, and to act according to their own canon in matters of personal affairs and religious education"[3]. Because of these explicit protections under the Constitution, the Islamic Republic of Iran's own laws defend its citizens' rights to freely to practice their religions without interference from the government. Saeed's case is one of many examples in the Islamic Republic of Iran where

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[1] *See generally* International Covenant on Civil and Political Rights, 16 Dec. 1966, 999 U.N.T.S. 171.

[2] QUANUNI ASSASSI JUMHURII ISLAMAI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1358 [1980], art.23.

[3] *Id.* art. 13.

the government has failed to acknowledge and/or comply with its obligations under these constitutional provisions and international law.

However, in 2014, the government of the Islamic Republic of Iran, under the leadership of President Hassan Rouhani, may be poised to act consistent with its obligations under its domestic and international law. On 26 November 2013, President Hassan Rouhani's administration published a draft human rights charter that reinforces many of the important human rights already defined in the Constitution. Among other things, the draft charter provides that "holding and attending religious ceremonies of those religions identified in the Constitution is permitted"[4]. The charter also calls for each citizen to have access to suitable medical care and treatment—a basic right currently being denied Saeed.[5]

While the human rights charter is, in many places, redundant of rights already provided in the Constitution, the Iranian administration's decision to produce this charter is significant and should be applauded. With the production of this charter, the government has intentionally highlighted the human rights concerns that it has so often ignored in the past. The creation of a new human rights charter under the looming shadow of a disgraceful human rights record is an encouraging sign that the Islamic Republic of Iran may be ready to start correcting some of its egregious human rights violations. If these sentiments emphasizing human rights translate to real changes in the Iranian judiciary, freedom may become possible for many Iranians from religious minorities who have been unjustly imprisoned, including Saeed.

Whether the Islamic Republic of Iran is really willing to start moving forward to correct its errors will be evidenced in part if it takes action to address Saeed's unjust imprisonment. Since Saeed's unconstitutional sentence was confirmed on appeal, Saeed has exhausted his legal remedies under Iranian law. However, Iranian Foreign Minister Mohammad Javad Zarif announced recently at the 2014 World Economic Forum that Iran has implemented clemency measures in the past that could conceivably be used again in Saeed's case.[6] It does not seem merely coincidental that this statement came on the heels of the new human rights charter. Instead, Foreign Minister Zarif's comment seems indicative of an Iranian administration attitude that embraces human rights.

Recommendations

Now that the Islamic Republic of Iran's current administration has expressed a desire to recognise its citizens' basic human rights, this Council is presented with a unique opportunity to urge the Islamic Republic of Iran to take further action in this direction and act in accordance with its laws and international obligations.

In light of the foregoing, we recommend that the HRC take the following actions:

- Urge the Islamic Republic of Iran grant immediate clemency to Saeed and other prisoners of conscience.
- Call on the Islamic Republic of Iran to recognise and enforce the provisions in its constitution that already establish protections for religious freedom and other basic human rights.
- Encourage the Islamic Republic of Iran to make the enforcement of human rights a priority within every branch of its government.

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[4] THE CITIZENSHIP RIGHTS CHARTER (2013), http://www.iranhumanrights.org/wp-content/uploads/Citizenship-Rights-Charter_English.pdf.

[5] *Id.*

[6] Ashley Fantz, *Kerry and Iranian Foreign Minister Talk Nukes, Imprisoned Americans*, CNN (2 Feb. 2014), http://www.cnn.com/2014/02/02/world/europe/kerry-zarif-iran/index.html.

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Written statement* submitted by Amnesty International, a non-governmental organization in special consultative status

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* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Honduras: deteriorating human rights situation needs urgent measures

Amnesty International is increasingly concerned about the human rights situation in Honduras, in particular about human rights violations against human rights defenders, women and girls, Indigenous, Afro-descendant and *campesino* (peasant) communities, and LGBTI people. These violations take place in a context where impunity for human rights violations and abuses is endemic and where organized and common crime is high. In 2011, according to UN figures, the homicide rate in Honduras was the highest in the world.[1]

Amnesty International recognises that in this context, the Honduran authorities face a challenge to guarantee public security. However, public security for all cannot be achieved at the expense of human rights.

Human Rights Defenders

Scores of human rights defenders in Honduras, including Indigenous and peasant leaders, LGBTI activists, justice officials and journalists have been victims of human rights violations in recent years. They have suffered killings, physical violence, kidnapping, death threats, threats of sexual violence and verbal attacks. Despite repeated calls from the United Nations, the Organisation of American States and Honduran human rights defenders themselves, no state mechanism has been developed to protect human rights defenders.

In July 2013, for example, three human rights defenders – a judge, an LGBTI activist and an Indigenous leader were killed within the space of less than two weeks in different parts of the country. All of them were defending justice and equality.

More recently, on 7 December 2013, two unidentified men shot dead journalist Juan Carlos Argeñal in his house in Danlí, in the southern department of El Paraíso. He was a correspondent for Radio Globo and Globo TV, as well as the owner of a local TV station and a political activist. In the months prior to his murder he had been reporting about corruption in local government, and in July 2013 he was threatened, apparently because of his investigative journalism.

Communities, groups and people most at risk

The **Indigenous peoples and Garífuna (Afro-descendant) communities** are discriminated against and suffer inequality, for example, in relation to their rights to land, housing, water, health and education. Large scale projects are carried out on their lands without being consulted and without their free, prior and informed consent. Indigenous and Garífuna leaders have faced fabricated criminal charges and have been the target of attacks and intimidation in reprisal for their work in defence of human rights. A recent example of this situation is the case of Bertha Cáceres, a Lenca Indigenous leader and general coordinator of the Civic Council of Popular and Indigenous Organizations in Honduras (COPINH), who has been harassed and intimidated and, according to the information received, is facing bogus criminal charges. Recently the judicial authorities themselves have dropped the charge against her for possessing an unlicensed firearm because there was no evidence of her carrying one. Bertha Cáceres has always insisted that the firearm allegedly found in her car was planted there. Despite this particular charge being dropped, she continues to face other charges and the legal system continues to be used against her. She is still facing charges of inciting others to commit crimes, in relation to protests her community has organised against a hydroelectric plant.

In July 2012, Lenca Indigenous leader Tomás García, also prominent member of COPINH, was shot dead by the army during a protest in Río Blanco, Intibucá Department. Lenca indigenous communities have been demonstrating since April 2013 against a hydro-electric power project in their territory, claiming that they had not been consulted or given their free, prior and informed consent.

[1] UNODC Homicide Statistics, available from: www.unodc.org/unodc/en/data-and-analysis/homicide.html

The long standing disputes over land between **peasant communities** and powerful landowners are one of the underlying causes of the high levels of violence faced by peasant communities in the regions of Bajo Aguán and Zacate Grande. Local organizations of the Bajo Aguán claim that in the last five years there have been over 120 killings related to the disputes over land.

Violence against **women and girls** is rife, with civil society groups reporting 606 killings of women in 2012, the highest number since 2005. Between December 2013 and January 2014, there was a wave of killings of female sex workers. In San Pedro Sula city, northern Honduras a transgender sex worker and nine women sex workers were killed in circumstances that are yet to be clarified.

Lesbian, gay, bisexual, transgender and intersex (LGBTI) people in Honduras suffer discrimination and violence. The positive step of reforming the Criminal Code in 2013, which enabled the punishment of hate crimes, must be implemented. Worryingly in recent months, there have been attempts by some Congress members to repeal this reform.

Impunity

Among the dozens of cases of human rights violations and abuses committed against human rights defenders in the last five years, according to the information Amnesty International has received, in only one case were those responsible prosecuted, convicted and sentenced. In April 2013, the then Attorney General explained to the National Congress that the Attorney General's Office only had the capacity to investigate 20% of the country's homicides. This institution is overwhelmed by the high levels of violence and crime in the country and it lacks the necessary resources to do its job effectively. In some cases even the prosecutors themselves have been afraid of taking action given the dangerous context.

The National Police should play a crucial role in criminal investigation, given that they are responsible for gathering and protecting evidence. However, they lack resources, expertise and accountability. Numerous reports indicate that the police frequently participate in human rights violations and organised criminal activities.

The independence of the judiciary is also a concern. For example, in December 2012, the National Congress voted to remove four of the five Supreme Court judges who comprise the Constitutional Chamber of the Supreme Court of Justice. The judges had earlier delivered a judgement that blocked a law proposed by Congress intended to facilitate a clean-up of the police force. The judges found some aspects of the law to be unconstitutional.

Role of the international community

Amnesty international urges the members and observer states of the Human Rights Council to:

- express concern at the human rights situation in Honduras especially regarding the situation of the groups most at risk;
- call upon the newly appointed Honduran Government to develop and implement a national human rights plan of action, paying particular attention to the situation of those who are most vulnerable;
- insist on the establishment of a state mechanism to provide comprehensive measures to protect human rights defenders at risk; and
- urge the UN Office of the High Commissioner for Human Rights to strengthen and expand its presence and mandate in the country.